

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE:

B-218894

DATE: May 29, 1985

MATTER OF:

Ginter Welding Inc.

DIGEST:

1. Bid on a total small business set-aside which indicates that all supplies to be furnished will not be the product of small businesses must be rejected as nonresponsive, because the bidder otherwise would be free to furnish supplies from a large business and thus defeat the purpose of the set-aside.
2. A nonresponsive bid cannot be made responsive by a post-bid-opening explanation.

Ginter Welding Inc. (Ginter) protests the rejection of its bid as nonresponsive to invitation for bids (IFB) No. DAAE07-85-B-J320, a small business set-aside issued by the Department of the Army for cargo trailers.

We dismiss the protest.

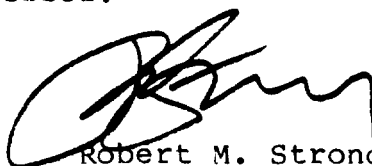
The IFB contained the standard Small Business Concern Representation provision set forth in the Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.219 (1984). The Army rejected the bid because in the provision, which requires two responses, Ginter checked the box indicating that it was a small business concern, but also checked the box indicating that not all supplies to be furnished would be manufactured or produced by domestic small businesses.

A responsive bid is one that, if accepted by the government as submitted, will obligate the contractor to perform the exact thing called for in the solicitation. FAR, 48 C.F.R. § 14.301. The certification concerning the bidder's obligation to furnish small business products is a matter of bid responsiveness because it involves a performance commitment, i.e., to deliver products manufactured by a small business. Thus, the bidder's intention to do so must be established at the time of bid opening. Otherwise, the small business contractor could defeat the purpose of

the set-aside program by delivering products from either small or large business firms as its own interests might dictate. See Hanson Industrial Products, B-218723, et al., May 9, 1985, 85-1 C.P.D. ¶ _____. Clearly, then, Ginter's bid was nonresponsive.

The protester alleges that it in fact intended to furnish small business products. Ginter states that it made the representation the way it did because it understood the word "supplies" in the provision to refer to the supplies used in the manufacture of the end products, not the end products themselves, and because all such supplies would not be the products of small business (for example, the axle assembly specified by the Army, and the steel used to manufacture the end product). We point out, however, that the certification clause expressly refers to supplies to be "furnished," which logically means the end products in a supply contract, as distinguished from supplies used by a manufacturer in producing the end products. In any case, in an advertised procurement post-bid-opening explanations cannot be used to make a nonresponsive bid responsive even if the government could obtain a lower price by accepting the corrected bid. Hanson Industrial Products, B-218723, supra.

The protest is dismissed.



Robert M. Strong
Deputy Associate General Counsel